



December 19, 2014, Deadline Set for EPA Coal Ash Rulemaking

The U.S. Environmental Protection Agency has agreed to take final action by December 19, 2014, on coal ash disposal regulations under the Resource Conservation and Recovery Act (“RCRA”) – setting the stage for conclusion of rules that were proposed in June of 2010.

The agreement is contained in a Consent Decree signed by all of the parties to a federal lawsuit that sought to compel a deadline for EPA. In the Consent Decree, EPA continued to signal that its final regulation would be promulgated under the “non-hazardous” Subtitle D of RCRA.

“The EPA Administrator shall, by December 19, 2014, sign for publication in the Federal Register a notice taking final action regarding EPA’s proposed revision of RCRA subtitle D regulations pertaining to coal combustion residuals,” the Consent Decree said. EPA has indicated in a related rulemaking on Effluent Limitation Guidelines that the Agency’s “current thinking” is that a Subtitle D regulation will be appropriate.

U.S. District Judge Reggie B. Walton – who ruled on October 29, 2013, that EPA has been negligent in not reviewing and revising (as necessary) EPA’s Subtitle D nonhazardous coal ash regulations at least every three years – is expected to ratify the Consent Decree. The action resulted from the lawsuit “Appalachian Voices et al vs. Gina McCarthy,” in which 11 environmental groups and ash marketers Headwaters Resources and Boral Materials sued EPA seeking a deadline. The Utility Solid Waste Activities Group and the National Mining Association were granted intervenor status.

Judge Walton’s October ruling denied two additional claims by the environmental groups to require EPA to revisit its “Bevill” rule that exempts coal ash from regulation as a hazardous waste and its test method for evaluating whether constituents leach from coal ash. As part of the Consent Decree, all of the parties to the lawsuit agreed that they will not appeal the ruling.

A copy of the complete Consent Decree is available [here](#).